

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 05-10089-PBS

THOMAS B. ASELTINE,

Defendant

**MEMORANDUM OF SENTENCING HEARING
AND
REPORT OF STATEMENT OF REASONS**

Saris, D.J.

Counsel and the defendant were present for sentencing hearing on 9/21/05. The Court has considered the factors set forth in 18 U.S.C. §3553(a), including the sentencing guidelines. The reasons for sentence were stated in open court.

- 1.(a) Were all factual statements contained in the
Presentence Report (PSR) adopted without objection?

X yes no

- (b) If no to (a) the PSR was adopted in part with the
exception of the following factual issues in dispute:

2. Are any legal issues in dispute?

yes X no

If yes, describe disputed issues and their resolution:

- 2.(a) Tentative findings as to advisory guidelines are:

Total Offense Level: 23

Criminal History Category: III

60 to 71 months imprisonment

24 to 36 months supervised release

\$ 10,000 to \$ 100,000 fine

(plus \$ cost of
imprisonment/supervision)

\$ 45,000 restitution [PAYABLE TO NATIONAL PARK SERVICE]
\$ 100 special assessment (\$ on each of counts)

(b) Are there any legal objections to tentative findings?

 yes X no

3.(a) Remarks by counsel for defendant.¹

 X yes no

(b) Defendant speaks on own behalf.

 X yes no

(c) Remarks by counsel for government.

 X yes no

4.(a) The sentence will be imposed as follows:

 84 months imprisonment [WITH A RECOMMENDATION TO A
FCI WITH A 500 HOUR ALCOHOL PROGRAM OR TO
FT. DEVENS]
 months/intermittent community confinement
 months probation
 36 months supervised release
\$ 10,000 fine (including cost of imprisonment/supervision)
\$ 0 restitution*
\$ 100.00 special assessment (\$ on each of
counts)

Other provisions of sentence: (community service, forfeiture, etc.):

- NO MORE THAN 104 ALCOHOL TESTS PER YEAR
- ALCOHOL AND MENTAL HEALTH COUNSELING
- DEFENDANT SHALL PROCURE FULL TIME EMPLOYMENT
- 10 P.M. CURFEW FOR FIRST YEAR
- * PURSUANT TO 18 U.S.C. §3664(d)(5) THE GOVERNMENT SHALL DOCUMENT THE
RESTITUTION AMOUNT SOUGHT WITHIN 30 DAYS.

¹ The order of argument and/or recommendation and allocution may be altered to accord with the Court's practice.

- (b) After imposing sentence, the Court has advised the defendant of the defendant's right to appeal within 10 days of the entry of judgment in accordance with FRCP 32(a)(2).

5. Statement of reasons for imposing sentence.
Check appropriate space.

(a) ☐ Sentence is within the advisory guideline range

(b) ☒ Sentence departs from the advisory guideline range as a result of:

☐ substantial cooperation upon motion of the government

OR

☒ a finding that the following (aggravating or mitigating) circumstance exists that is of a kind or degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that this circumstance should result in a sentence different from that described by the guidelines for the following reasons:

THE GOVERNMENT AND DEFENDANT AGREED TO AN UPWARD DEPARTURE IN THE PLEA AGREEMENT BECAUSE THE MULTIPLE ARSONS CHARGED IN STATE COURT INCREASED THE CRIMINAL HISTORY CATEGORY TO IV.

6.(a) Is the sentence under the advisory sentencing guidelines reasonable in light of the factors set forth in 18 U.S.C. §3553(a)

☐ yes ☒ no

(b) If no, why is the guideline sentence unreasonable?

SEE ABOVE.

(c) Is restitution applicable in this case?

☒ yes ☐ no

Is full restitution imposed?

☒ yes ☐ no

If no, less than full restitution is imposed for the following reasons:

(d) Is a fine applicable in this case?

X yes no

Is the fine within the guidelines imposed?

 yes X no

If no, the fine is not within guidelines or no fine is imposed for the following reasons:

 X Defendant is not able, and even with the use of a reasonable installment schedule is not likely to become able, to pay all or part of the required fine; OR

 Imposition of a fine would unduly burden the defendant's dependents; OR

 X Other reasons as follows:

RESTITUTION IS A HIGHER PRIORITY.

7. Was a plea agreement submitted in this case?

 X yes no

8. The PSR is adopted as part of the record, either in whole or in part as discussed above and is to be maintained by the U.S. Probation Department under seal unless required for appeal.
9. Judgment will be prepared by the clerk in accordance with above.
10. The clerk will provide this Memorandum of Sentencing Hearing And Report on Statement of Reasons to the U.S. Probation Department for forwarding to the Sentencing Commission, and if the above sentence includes a term of imprisonment, to the Bureau of Prisons.

Date

S/PATTI B. SARIS
United States District Judge